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Supreme Court of the United States

OCTOBER TERM, 1946.

No. 165.

GEORGE W. PEELER, PETITIONER,

VS.

MRS. ESSIE COOK CAVER PEELER, DEFENDANT.

PETITION FOR REHEARING BY GEORGE W. PEELER.

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PETITION FOR REHEARING BY GEORGE W. PEELER.

George W. Peeler is much aggrieved by the decision of this court rendered on Monday, 14th of October, 1946, denying certiorari to Supreme Court of Mississippi in this cause. We sincerely believe and assert that this court has overlooked or not sufficiently considered important and controlling points of law and fact, that should determine the case otherwise than was decided.

The "controlling principles in the case" (R. 50, 24 So. 2d 338) was held that wife, Mrs. Peeler, could purchase at trustee's sale, the ancestral home of her husband, Mr. Peeler, and hold same adversely to her husband.

This is contrary and in direct violence to rules of law and equity announced and settled in that state by

its supreme court, and applied to all other litigants involving these principles for more than 56 years, and those decisions have not been overruled or destroyed as highways for travel of such litigable propositions. That Court's decision is contrary and in violence to the corpus or body of the law settled for nearly a hundred years.

Mississippi court held:

> "Wherever the husband is disqualified to purchase, so is his wife" (R. 54, 24 So. 2d 340).

Mississippi court cited, approved and said it followed the law as collected in Volume 26 of American Jurisprudence, page 737. This particular citation was as to "execution or judicial sales," but of which kind of sales must be finally confirmed by a court, like partition sales, and had no application to this Peeler sale which was a foreclosure sale denominated by the courts as the "harshest of sales," and need no court confirmation whatsoever. The very law book cited and approved by Mississippi court, 26 Am. Jur. 736, holds:

> "Husband cannot buy property of wife" (Note 3, Sec. 112).

In the home state of Mr. Chief Justice Fred M. Vinson and Mr. Justice Stanley Reed, Kentucky, it was directly involved in 1853, or 93 years ago, where a 1,000 acre tract of land owned by wife was purchased by the husband, and said purchase directly involved and the court through Simpson, J., held:

> "Husband's entry upon land of his wife, cannot afterwards prejudice her rights by buying a title adverse to that right."

1853—

Young v. *Adams*, 14 B. Monroe 127, 58 Am. Dec. 654.

c/f 26 American Jurisprudence 736, Sec. 112, Note 3.

This is certainly the body or corpus of the law, as adopted by the law writers. This is strictly in accord with Mississippi Court decisions prior to the Peeler case, and those decisions were not overruled and destroyed as "state created rights," but left for others to follow that highway or rules of property long established.

In *Robinson* v. *Lewis*, 68 Miss. 69 (1890), the facts were Mrs. Lewis and her brother J. A. Criddle owned the land as tenants in common. Lewis, the husband, bought at tax sale, the Criddle one half interest, that Robinson had purchased at execution sale, and Mississippi Court, holding that Lewis, the husband was in such confidential relation to the wife who was in confidential relation to her brother's former interest and his consignee's interest (Robinson), he could not purchase and hold said interest adversely, said:

> "That an estoppel *in pais*, operates against the husband, would be applied against the wife."

Then in 1907, 49 years ago, in *Beaman* v. *Beaman*, 90 Miss. 762, Mrs. Charles Beaman, wife of Charles Beaman, she and he were in possession of the land that had been mortgaged by Alex Beaman, father of Charles Beaman, and mortgage foreclosed, and Mrs. Beaman bought like Mrs. Peeler did, and Mississippi Court held:

> "Neither he nor she being the wife, could acquire rights by purchase, because it is in controversion of public policy."

That court not only stated the law again but cited and relied on *Robinson* v. *Lewis*, 68 Miss. 69, but also cited and relied upon *Hambblett* v. *Harrison*, 80 Miss. 118, where attorney Hambblett was in confidential relations to one of the owners, and therefore he could not buy and hold adversely. The long line of decisions of Mississippi court holding that where parties are in confidential relations to an owner of the property *regardless of such owner's interest*, such person could not purchase and hold adversely. These cases are cited in the original petition and brief, and cannot be distinguished, and must be applied if the "equality Clause" written in the 14th Amendment is still to be respected and applied as a live existing Constitution of the United States.

In the very citation made by the Supreme Court of Mississippi (R. 53, 24 So. 2d 737), namely, 26 Am. Jur. 737, Sec. 112, holds:

> "Husband and wife occupy towards each other a fiduciary relation of the utmost confidential character which requires the utmost degree of good faith between them, and no court of law or equity will permit a gross abuse of that relation by any such transactions." Cf. *Swish's Appeal*, 56 Pa. 475, 94 Am. Dec. 107.

No Statutory or Constitutionally created rights have given foundation for the court of that state to change its decisions, change its rules of property long established, and we do not have here involved such a right or whether the court could exercise such power or right. The fundamental and controlling question is like it has been in other cases before this court, like *Ashcraft* v. *Tennessee*, 322 U. S. 143, and again February 25th, 1946, in which the courts of Tennessee said and held that it had applied "due process" and "equality" clauses and had a fair and

impartial trial, but this court investigated and found that the State court had not applied the law constitutionally and correctly so as to amount to "due process" is not "property" placed on the same equal with "personal liberty" under the 14th Amendment, and in the same clause.

In the preparation of the original petition and brief, and in this petition we have had in mind what this court has said and held as to,

"a state created right."

Guaranty Trust Co. v. *York,* 326 U. S. 99; *Erie R. Co.* v. *Tompkins; Homberg* v. *Armbreath,* February 25th, 1946, also the noted case of *McGehee* v. *Hood et als.,* 237 U. S. 611, where it was held by Judge Grubb that

"a State is sole mistress of the devolution of (Alabama) land by descent."

However none of these decisions are against our contention in this cause, and when carefully and correctly considered are not authorities against Peeler in this cause. These cases are in fact in favor of Peeler. If Judge Grubb had not applied Alabama law long settled in that case, he would not have applied "due process" and "the Equality" clauses in 14th amendment against the Hoods and in favor of the McGehees.

It is well settled law:

"That a suitor is entitled to have the relief justified by the facts he has pleaded, whether he has accurately described his pleading or has asked for proper relief." *U. S.* v. *Memphis Cotton Oil Co.,* 288 U. S. 62; *U. S.* v. *Bemis Bag Co.,* 289 U. S. 28.

The facts in the Peeler case are foreclosed by Documentary Records certified under the Constitution and acts of Congress as to full faith and credit that shall be given them,

and R. 18 shows as a documentary fact, that Mrs. Peeler was the wife of George W. Peeler, until the day the court of Tennessee, legally severed that status on November 10, 1942. Nearly two years before that date, Mrs. Peeler, while his wife, attempted to purchase his title through a foreclosure on May 20th, 1940 (R. 36, 37).

We must look to the kind of title or interest she had in that property at the date she attempted to purchase, and the law of that state had said that a wife such as Mrs. Peeler had in the ancestral home of her husband on that date,

> "Therefore the wife has *some kind of interest* in, although no title to, the land. She has a right to live upon the land, to occupy it so long as it remains a homestead and so long as she has not forfeited her rights as a wife."

Columbian Mutual Life Ins. Co. v. *Jones,* 160 Miss. 41, 133 So. 149, decided in 1931 and was the last definition of a wife's rights under Mississippi law as held by Mrs. Peeler, *at time she purchased in* 1940 *at mortgage foreclosure.* This decision is cited and adopted as correct by that court. R. 52, 24 So. 2d 339. She was therefore "Occupying towards her husband fiduciary relations of the utmost confidential character which required the utmost degree of good faith," if the very law cited and adopted by that court is followed, 26 Am. Jur. 737, Sec. 112. She could not buy in such an adverse title and hold same against her husband, if the body of the law is applied. *Young* v. *Adams,* 14 B. Monroe 127, 58 Am. Dec. 654. And this can not be upheld, if Mississippi law as settled in *Robinson* v. *Lewis,* 68 Miss. 69, and *Beaman* v. *Beaman,* 90 Miss. 762, is applied.

This court can not open its eyes and read and apply the state Court's last decision in this cause which does not overrule its former decisions cited above and in the original petition and Brief in detail, if the "due process" and "equality" clauses are to be kept in mind and followed as Constitutional law. Does not the Constitution of the U. S., Art. VI, say mandatorily,

> "This Constitution * * * Shall be the supreme law of the land. And the Judges in every state shall be bound thereby, anything in the laws in any state to the contrary, notwithstanding."

Then we turn and read the 14th Amendment which mandatorily says, that,

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of United States; nor shall any state deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

When Peeler filed his suit in the courts of Mississippi, was he not "a person within its jurisdiction," and was he not entitled to have the "equal protection of the laws" of that State, and when the laws of that state which had held, and still stand as flags unfurled to the world as the law, that husband and wife are such confidential and fiduciary relations to each other, that neither can buy the title of the other and hold adversely, yet this law is not applied to Peeler. Does not this State decision do violence to the above constitutional guaranty, "No state shall make or enforce any laws which shall abridge the privileges and immunities of citizens of the United States," and from this record is not Peeler a "citizen of the United States"? Are not these rights, privileges, immunities set forth and claimed in the pleadings of Peeler, and in his

Assignments of Error before the State court, and TOTALLY IGNORED by that court?

Do not the ten decisions cited and quoted from on pages 31, 32, 33, 34, of our original petition hold and "establish a state right" that however small the interest WIFE, Mrs. Peeler, may have in property, such person cannot buy in an outstanding title and defeat the other owner, but will only acquire thereby security for the debt and *no title.*

Does not the body or corpus of the law cited 26 Am. Jur. 737, Sec. 112, and *Young* v. *Adams,* 14 B. Monroe 127, 58 Am. Dec. 654, hold that a wife can not buy in her husband's title and hold adversely to him. Mississippi court has held contrary to this, the decisions of that state and the body of the law, as collected by law writers and stated by courts of highest respectability, and is the State Court's decision that it will not apply this law to Peeler to be lightly dealt with and approved. The motive or reason why that state court ignored, and would not even mention much less pass on these federal questions raised in pleadings and in assignments of error need not be ferreted out, but we need only to see that error was committed, and the Federal Constitutional rights are protected, and that "This Constitution * * * shall be the supreme law of the land," Art. VI, Const. As it now stands, this is not true but the laws promulgated by the state supreme court are supreme, and the Federal Constitution is relegated to the back woods or of no force and effect in Mississippi. Will this court permit this to be done?

Will this court permit Peeler to be deprived of his property "without due process of law," and that Peeler be denied "the equal protection of the laws," that has been applied to others for 50 or 60 years in that state, and as held by the body of the law?

Evidences or Circumstances Tending to Show That the State Court Was Determined Through Human Error to Deprive Peeler of His Property, and Award It to Mrs. Peeler.

1. That court stated in original opinion (R. 55) and also by denying a rehearing and not changing its opinion that Peeler, was repelled, because he

"has not offered to do full equity toward his wife."

Yet the bill filed by Peeler, Sec. 14 (R. 7), Peeler says under oath,

"complainant offers to do equity, etc." (R. 7).

"Tender is unnecessary," said that court. *Beaman* v. *Beaman*, 90 Miss. 762.

2. That the pleadings and assignments of error challenged that "The proceedings in Chancery Court of Prentiss County, case No. 4734" (R. 19) was void of "due process of law," under Mississippi decisions for 127 years and especially under 14th Amendment, yet the court indicated such proceeding valid, but would not pass on this question positively, though its duty under the statute, Sec. 1148, Code, 1942, was to "settle all controlling principles in this lawsuit" and that was left unsettled.

3. Neither Mrs. Peeler's able counsel, nor the State court were able to cite a former decision of Mississippi court holding as the law that a wife could buy at harsh foreclosure sale not made in court and not subject to court's confirmance, the title and property of her husband, nor any case from body of the law so holding.

4. Court in fact held that Peeler,

"he had deserted her" (R. 54).

Yet Mrs. Peeler had full opportunity to raise and litigate this and any other question in Tennessee Court but was cast as in the wrong in 1942 (R. 17) and this cannot be held or approved if "full faith and credit" is accorded Tennessee record, as guaranteed in Art. IV, Sec. 1. The same is true where that court said of Peeler, "he had provided no domicil or homestead elsewhere" (R. 53) and that Peeler had failed to pay,

> "the expenses of the last illness and burial of his mother" (R. 53)

are all circumstances to show that human nature to favor the woman and against the man, and not apply that judicial requirement of "equal rights to each," and applying the law to adjudicated facts in Tennessee record made in 1942.

Estoppel.

This was only applied to vacant lot, and not ancestral home of Peeler, and is of lesser importance to other questions.

Conclusion.

Peeler therefore petitions that he have a rehearing, and that certiorari be granted and cause heard accordingly, and that the actions of the State court be reversed. This petition is prepared and filed in good faith and not for delay. We have mailed properly stamped, a copy of this petition to Mrs. Peeler's counsel, Cunningham & Cunningham, Attorneys, Booneville, Mississippi, this November 11th, 1946.

Respectfully submitted,

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Attorney for George W. Peeler.